ENG HOCK LAI & ANOR.

v.

LENG HONG YUEN

HIGH COURT MALAYA, RAUB
VC GEORGE J
[MINING CASE NO. 2 OF 1979]
11 MAY 1982

TRADE AND INDUSTRY: *Mining - Lease - Complaint to Senior Inspector of Mines of breach of conditions of lease by sub-lessee - Transfer of dispute to High Court under s. 101 of the Mining Enactment - Application by one of the complainants to have his name struck out and order of costs against solicitors.*

One Tengku Abdul Ghani Ibni Almarhum Sultan Abdullah and one Eng Hock Lai, the lessees of a mining lease, lodged a complaint with the Senior Inspector of Mines at Kuantan against the sub-lessee, one Leng Hong Yuen, for the alleged breach of certain conditions of the sub-lease. Eng Hock Lai also lodged a complaint against Leng Hong Yuen regarding another mining lease of which he was the sole lessee. The solicitors for the complainants at this time were Messrs. Ariffin & Ooi, but in January 1980 Messrs. Skrine & Co. claimed to take over the conduct of the matter.

The Inspector of Mines summoned the parties to a hearing. He adjourned the case and thereafter exercised his powers under s. 101 of the Mining Enactment (the Enactment) and thereafter had the matter transferred to the High Court. The Senior Assistant Registrar was of the view that the Senior Inspector of Mines should complete the case and give his decision before the matter could be transferred to the Judge. But the Judge held the Senior Assistant Registrar was wrong and directed the complainants to file their "points of claim" and the sub-lessee a defence. This they did and a reply was also filed to the defence. The points of claim and reply were filed by M/s. Ten Chin Yong & Appaduray of Kuantan who purported to act for the complainants at the giving of directions.

Before the continued hearing of the enquiry was heard by the Judge, Tengku Abdul Ghani by solicitors M/s. Tan Kong Hai & Co., of Raub filed an application asking for an order that his name be struck out from the proceedings on the ground that the complaint to the Senior Inspector of Mines, which was purported to have been made on his behalf, was done without his authority and for a further order that M/s Ten Chin Yong & Appaduray bear and pay all his costs in the action.

Held:

[1] By s. 97 of the Enactment a Senior Inspector of Mines may enquire into and decide all disputes between occupiers of mining lands. He may issue a summons to all persons whose interest may be affected by the enquiry [s. 99(i) & (ii)] if he thinks a complaint made to him is on good grounds. Clearly the Senior Inspector of Mines was of the view that the complaint was based on good grounds. Even if Tengku Abdul Ghani had not joined in the complaint, he would have been notified of it and would have been called to attend at the enquiry [s. 99(ii)]. This procedure is designed to provide a cheap and expeditious machinery for dealing with such complaints. [Whitley Ag. CJ, (SS) in *Fong Yin Fong & Anor. v. Yeo Chee Seng* [1936] MLJ 224].

[2] The enquiry having been transferred to the High Court, the Court was in at least the same position as the Senior Inspector to give directions within the terms of the Mining Enactment.

[3] No real purpose would be served at that stage by entering into a full enquiry as to whether in fact Eng Hock Lai had been authorised to lodge the complaint on behalf of Tengku Abdul Ghani.

[4] It would be expedient and the ends of justice would be met by the Court directing that the enquiry commenced before the Senior Inspector of Mines be continued before the Court at a date or dates to be fixed on the basis that the complainant was Eng Hock Lai alone.

[5] Tengku Abdul Ghani was a person whose interest may be affected by the enquiry [within the meaning of s. 99(i) of the Enactment] and the Senior Assistant Registrar must notify him of the continued hearing of the enquiry and to call him to attend the same.

[6] The claim for costs and indemnity against M/s. Ten Chin Yong & Appaduray should be dismissed. If in fact Eng Hock Lai did not have authority to instruct solicitors on behalf of Tengku Abdul Ghani, then the latter's claim for costs and indemnity should lie against Eng Hock Lai. The solicitors took over in mid stream on behalf of the complainants who were already on record as complainants. It is not the general practice to obtain written forms of retainer. Tengku Abdul Ghani had in fact made no objection earlier, though he knew that the complaint was in his name and had made out a statutory declaration.

Case referred to:
Fong Yin Fong & Anor. v. Yeo Chee Seng [1936] MLJ 224

Legislation referred to:
Mining Enactment (FMS Cap 147), ss. 97, 99, (i), (ii), (iii), 101

For the 1st plaintiff - G. Sri Ram
For the 2nd plaintiff - Tan Kong Hai
For the defendant - Khoo Eng Chin, R R. Sethu
For the M/s Ten Chin Yong & Appaduray - Lim Kean Chye

JUDGMENT

VC George J:

By a letter dated 8 May 1979 Messrs. Ariffin & Ooi, advocates & solicitors purporting to act for one Tengku Abdul Ghani Ibni Almarhum Sultan Abdullah and one Eng Hock Lai @ Eng Hok Lay, the lessees of a mining lease in respect of Lot 9331 in the Mukim of Gali, District of Raub lodged a complaint with the Senior Inspector of Mines Kuantan against the sub-lessee, one Leng Hong Yuen for the alleged breach of certain conditions of the sub-lease.

By another letter also of 8 May 1979 the same solicitors purporting to act for Eng Hock Lai @ Eng Hok Lay the sole lessee of another mining lease in respect of Lots 2230, 1267 and 3975 all in the Mukim of Gali, District of Raub lodged a similar complaint against the same Leng Hong Yuen as sub-lessee.

In January 1980 Messrs. Skrine & Co., advocates & solicitors claimed to take over the conduct of the matter from Messrs. Ariffin & Ooi and purporting to act for both Tengku Abdul Ghani and Eng Hock Lai pursued with the complaints lodged (which were purported to have been made pursuant to s. 99 of the Mining Enactment (FMS. Cap. 147) resulting in the Senior Inspector of Mines, Pahang sending his letter dated 12 February 1980 to Eng Hock Lai and

Tengku Abdul Ghani "c/o Tetuan Skrine & Co." and to Leng Hong Yuen at "No. 132, Petaling Garden, Petaling Jaya, Selangor" summoning the addresses to attend before him [presumably pursuant to s. 99 (ii) of the Enactment] on 13 March 1980 on which day the record shows that Encik H. S. Goon of counsel appeared for both Eng Hock Lai and Tengku Abdul Ghani (who was absent) and Encik Ghazali Mat Ariff of Counsel appeared for Leng Hong Yuen.

After taking the evidence of Eng Hock Lai and Leng Hong Yuen the Senior Inspector of Mines adjourned the case and thereafter exercised his powers under s. 101 of the Enactment and had the matter transferred to the High Court.

The Senior Assistant Registrar of the High Court was of the view that the Senior Inspector of Mines should complete the case and give his decision before the matter could referred to the Judge. In this view he was clearly wrong and when the matter was brought to my attention I required the parties and/or the solicitors to attend before me for directions as to the further conduct of the case and I directed that the complainants should file their "points of claim" to which the sub-lessee should file a "defence". This was done and a "reply to the defence" was also filed.

The solicitors who purported to act for the alleged complainants at the giving of directions were M/s. Ten Chin Yong & Appaduray of Kuantan and it was they who filed the "points of claim" and "reply to defence" which they did on behalf of both complainants. M/s. Sethu, Ghazali & Gomez acted for the sub-lessee Leng Hong Yuen.

On 25 September 1981 before the continued hearing of the enquiry was heard by me, Tengku Abdul Ghani by solicitors M/s. Tan Kong Hai & Co. of Raub filed an application (J351) enclosure (68) asking for an order that his name be struck out from the proceedings on the ground that the complaint made to the Senior Inspector of Mines which was purported to have been made on his behalf was done without his authority and for a further order that M/s. Ten Chin Yong & Appaduray "do bear and pay all the costs of the said Tengku Abdul Ghani ibni Almarhum Sultan Abdullah in this action, including the costs of this application, to be taxed as between solicitor and own client, and also do pay all costs (if any) which the said Tengku Abdul Ghani ibni Almarhum Sultan Abdullah has been ordered to pay in this action and also all the costs of the defendant occasioned by the joinder of the said Tengku Abdul Ghani ibni Almarhum Sultan Abdullah as a plaintiff, including the defendant's costs of this application, to be taxed as between party and party."

This application was supported by the affidavit of Tengku Abdul Ghani affirmed on 22 September 1981 and attached to it was a copy of statutory declaration made by him on 2 April 1980. The contents of the affidavit and declaration are *inter alia* to the effect that Tengku Abdul Ghani had made no complaint to the Senior Inspector of Mines, he did not authorise Eng Hock Lai to lodge any complaint on his behalf or to instruct solicitors, he himself did not instruct any solicitors other than M/s. Tan Kong Hai & Co. [to make the application enclose (68)], he was satisfied that in fact there were no breaches of conditions by the sub-lessee and that he was not aware of the complaint lodged by Eng Hock Lai until it was brought to his attention two days prior to 2 April 1980.

Eng Hock Lai field an affidavit in reply to Tengku Abdul Ghani's affidavit. He explained how he and Tengku Abdul Ghani came to be joint lessees of the land. He contended that it was "with the implied or express permission" of Tengku Abdul Ghani that he had commenced proceedings against Leng Hong Yuen for breach (of conditions) of the sub-lease for which purpose he had employed and paid for the services of solicitors. He stated that he had "the authority and permission (of Tengku Abdul Ghani) to act and represent him in all matters

relating to MC 493" (in respect of lot 9331) and that Tengku Abdul Ghani "was informed of everything I did in connection with MC 493." Eng Hock Lai sought by an application [enclosure (87)] to cross-examine Tengku Abdul Ghani on his affidavit.

Encik Ten Chin Yong of M/s. Ten Chin Yong & Appaduray also filed an affidavit stating *inter alia* that his firm was instructed by Eng Hock Lai to take over the conduct of the matter from M/s. Skrine & Co. who were already on record as acting for both Eng Hock Lai and Tengku Abdul Ghani.

M/s. Ten Chin Yong & Appaduray have since discharged themselves from further acting for Eng Hock Lai and another firm of solicitors M/s. Sri Ram & Co. have now stepped into their shoes.

The matter I am concerned with here is the application which is enclosure (68) i.e. the application by Tengku Abdul Ghani in respect of which I heard a full argument by counsel. In hearing the application I had in mind the existence of the application to cross-examine Tengku Abdul Ghani.

By s. 97 of the Enactment a Senior Inspector of Mines may enquire into and decide all disputes between occupiers of mining lands either amongst themselves or in relating to themselves and third parties. Proceedings may be instituted by a complaint which may be in writing or even made orally and if the Senior Inspector "thinks the complaint is based on good grounds" he shall issue a summons to the party complained against and shall also call (to the hearing of the enquiry) all persons whose interest may be affected by the enquiry. [See s. 99 (i) and (ii)]. If there is a default in attendance of a party summoned (or called) it shall be lawful for the Inspector to hear and decide the complaint notwithstanding that the interests of such absent party may be prejudicially affected by such decision [s. 99 (iii)].

The powers given to the Senior Inspector and the procedure laid down for the disposal of complaints is [as was observed by Whitley Ag. CJ (SS) in *Fong Yin Fong & Anor v. Yeo Chee Seng* [1936] MLJ 224] designed to provide a cheap and expeditious machinery for dealing with such complaints.

Clearly the Senior Inspector of Mines was of the view that the complaint was based on good grounds - hence his summoning the parties to the enquiry that he held. If the complaint had been at the instance of Eng Hock Lai alone, then it seems to me that there was no question but that the Senior Inspector would have notified Tengku Abdul Ghani of the complaint and would have called him to attend at the enquiry. Pursuant to the last limb of s. 99(i) of the Enactment he would have been obliged to do so.

The Senior Inspector having transferred the enquiry to the High Court this Court is in at least the same position as the Inspector to give directions within the terms of the Mining Enactment (as would have the Senior Inspector of Mines had the matter been continued before him) that would enable all parties concerned and all parties whose interest may be affected to be heard before giving a decision. The key word, the Court should have in mind in giving consideration to the situation now obtaining is "expeditious" coupled with giving all parties interested an opportunity of being heard before any decision is made. And in keeping with that, to my mind, to come to a decision on the future conduct, of this matter, no real purpose will be served at this stage by entering into a full enquiry as to whether in fact Eng Hock Lai had been authorised expressly or by implication to lodge the complaint on behalf of Tengku Abdul Ghani particularly as I am of the view that sufficient facts are before me to arrive at a decision on the claim by the applicant that M/s Ten Chin Yong & Appaduray should meet his costs and any costs that he might be ordered to pay.

In my view it would be expedient and the ends of justice would be met by my directing that the enquiry commenced before the Senior Inspector of Mines be continued before me at a date or dates to be fixed on the basis that the complainant is Eng Hock Lai @ Eng Hok Lay alone and I so direct. I find that Tengku Abdul Ghani Ibni Almarhum Sultan Abdullah is a person whose interest may be affected by the enquiry (within the meaning of s. 99(i) of the Enactment) and I direct the Senior Assistant Registrar to notify him of the continued hearing of the enquiry and to call him to attend the same.

As to the question of costs, it seems to me curious that Tengku Abdul Ghani is seeking cost and an indemnity against any costs he may be ordered to pay, against the solicitors M/s. Ten Chin Yong & Appaduray alone when it is palpably clear that if in fact Eng Hock Lai did not have the authority to instruct those solicitors on behalf of Tengku Abdul Ghani (in respect of which I do not at this stage come to any conclusion) then his claim for the costs and the indemnity he seeks should lie against Eng Hock Lai and perhaps against the solicitors as well. In the instant case, whether such a claim for costs would also lie against the solicitors would depend on the circumstances. The solicitors simply took over the conduct of a matter in mid stream, as it were, on behalf of the complaints who were already on record as complainants. In a system where it is not the general practice to obtain written forms of retainer, in all the circumstances the solicitors were not put on notice that in fact Eng Hock Lai may not have been authorised to instruct them on behalf of his co-lessor.

It does seem strange that having come to know of the fact of the complaint in his name at the end of March 1980 and having made out the statutory declaration, Tengku Abdul Ghani did not bother to express his objection to the use of his name to Eng Hock Lai and to the Senior Inspector of Mines.

The claim for costs and for indemnity for costs against M/s Ten Chin Yong & Appaduray is dismissed. The name of Tengku Abdul Ghani Ibni Almarhum Sultan Abdullah as "a plaintiff" is struck out. There will also be an order in the terms of the directions I have given hereabove.

Also found at [1982] CLJ 486